IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 95 of 1992

For Approval and Signature:

Hon'ble MR.JUSTICE KUNDAN SINGH

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

SIPU PROJECT EMPLOYEES WELFAREASSOCIATION

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 95 of 1992

MR SAURABH J MEHTA for the petitioner

MR LR PUJARI AGP for Respondent No. 1-1/2

CORAM : MR.JUSTICE KUNDAN SINGH

Date of decision: 26/07/2002

ORAL JUDGEMENT

1. This petition has been filed for a direction to the respondents to immediately pay the project allowance

with arrears from 1-5-1988 and further direction to the respondents to give project allowance upto 31-3-1993 and thereafter also not to discontinue the amenities which are being continued to be given to the members of the petitioner - association and also to hold that the employees who are residing at project site colony of Sipu Project are entitled to the project allowance as per the existing Government Regulation.

2. It is stated that the Government started the work of Sipu Project where the members of the petitioner association are working from 1980. The project site colony was established in the year 1984 and the Chief Engineer cum Joint Secretary had approved the location/site for the project colony and after his approval the colony was set up. In consultation with the Finance Department from 1984 onwards the members of the petitioner association are being regularly given project allowance and other amenities as per the various Government Resolutions right from the date of establishment of the colony. On the basis of the Government Resolution dated 21-5-1988, the workers and the staff members of the Sipu Project have been allowed to opt either to take project allowance or the amenities mentioned in the aforesaid Govt. Resolution that the allowance is intended primarily to compensate the staff for lack of amenities such as housing, schools, markets, dispensaries, etc. where reasonable amenities already exist, there would be no justification for grant of project allowance. It is also stated that if the project is located at a place where compensatory city allowance and/or house rent allowance or any other special compensatory allowance is admissible, no project allowance will be admissible. The project allowance will be admissible only to such staff employed on the project and reside within the project area or in a nearby locality. As an exception, the allowance may be granted to an employee residing outside the project area if he has to reside outside the project area due to nonavailability of residential accommodation in the area. It is also stated in the letter dated 21-8-1987 written by the Superintendent Engineer to the Deputy Engineer that the project allowance has been sanctioned to the staff staying in Sipu Project colony at the project site. But there is no colony at Dam site and the project colony is situated at Dantiwada. Staff staying at Sipu Project colony located at Dantiwada is entitled to get project allowance as per GR dated 18-7-1987.

3. The affidavit-in-reply has been filed on behalf of the respondent, wherein it is stated that the members

of the petitioner association are not working at project site and are therefore not entitled to claim the project allowance. Most of them are working in the administrative office which is situated in colony which is not at the project. The Government has decided to construct a colony at Nipur, Dantiwada, Banaskantha District which is situated at 12 km. away from the project site. The project allowance is admissible only to those staff who actually stay on the project site. As per GR dated 14-4-1984, whereby the Government has sanctioned the project allowance to the staff working at Sipu Project with effect from the date on which staff actually started residing in the quarters of project colonies at the project site and started the work upto 28th February, 1985 or till the Government takes a decision on the Third Pay Commission final recommendation whichever is earlier. The project allowance will not be admissible to those staff who actually do not stay in the quarters of the project colonies on project site.

4. In the present case, the petitioners are not staying on the project site but they are staying in the colonies which are not situated at the project site. Moreover, all the petitioners are doing administrative work in the administrative office which is situated in the colony which is away from the project site. The persons who are not staying at the project site are not entitled to claim the project allowance. The project allowance is linked with the site of the project. The project allowance was paid to the petitioners upto 30-4-1988 along with the salary by mistake of the local authorities. Hence, the authorities are taking steps for recovery of that amount from the concerned employees. The Government has considered the various factors for not granting the project allowance to the petitioners. The petitioners are being paid the house rent allowance, city compensatory allowance and other amenities as prescribed by the Government. There is secondary school in the Gujarat Agricultural University Campus at Dantiwada. The education facility is also available to their children. There is also dispensary and shopping centre in the nearby area. Hence, the Government has decided not to grant project allowance to the members of the petitioner association.

5. Heard the learned counsel for the parties at length and I have gone through the relevant papers on record. It is also stated that the members of the petitioner association were initially given the project allowance and after implementation of the Circular dated 5-5-1966 the amenities were given to the members of the

petitioner association. Learned A.G.P. has also referred to the GR dated 29-12-1990 of the Narmada Water Resources Department which is in respect of grant of project allowance for the employees working on Sipu Project, wherein it is mentioned that under Narmada Development Department's resolution, the staff of Sipu Project were sanctioned project allowance upto the month of May 1987 and it was extended upto 30-4-1988. The question of grant of project allowance was under consideration and the Government has sanctioned the project allowance from 1-5-1988 to 30-3-1999 at the rate prescribed in the said resolution dated 21-5-1988. The project allowance has been restricted to only those persons who were residing at the project site and the basic amenities were not available to them which shows that the inspection note is based on the proposal made by the Superintending Engineer who has proposed to construct Sipu Dam Colony at Deesa. There is no direct road from Sipu Dam. There is only one road via Dantiwada Campus which is 40 km. long. Hence, he had proposed that the colony should be constructed at Dantiwada campus where Gujarat Agricultural University, B.S.F. Colony etc. are situated at Dantiwada. Moreover, the road from Dantiwada to Sipu Dam is only 12 k.m. which is the shortest distance and therefore colony for Sipu dam should be located at Dantiwada site. Vide letter dated 21-8-1987 the Superintending Engineer informed the Dy. Secretary that there is no colony at dam site but Sipu Project Colony is situated at Dantiwada.

6. The main question is whether the members of the petitioner association are entitled to get the benefits of the project allowance and / or amenities provided for the staff of Sipu Project. As per the Government Resolution dated 21-5-1988 staff or employees are entitled only one or two benefits i.e. either to get amenities or project allowance but not both simultaneously. The project allowance was admissible only to those persons were not getting the amenities. That resolution has been amended by GR dated 27-12-1988 whereby the project allowance has been revised at uniform rate of Rs.75/- p.m. to all employees of project (irrespective of pay scale) and to continue to avail of existing project amenities available in a project as shown in the said GR dated 27-12-1988. As such, the project allowance has been given with availability of existence of the project amenities which were being utilized by the members of the petitioner association.

7. Now, the question arises as to whether the members of the petitioner association who are not

residing at the project site are entitled to get amenities as well as the project allowance or not ? As per the Govt. Resolution dated 14-4-1984 the project allowance is permissible to the staff working on Sipu project actually staying in the quarters of the project colony or project site. In the facts and circumstances of the case, as stated above there is no colony on the Sipu Project site. If certain persons are living in the tents or tin sheds on Sipu dam that cannot be termed as colony for the living of the staff members of the Sipu Project. Project colony at Dantiwada has already been recognized for the members of the petitioner association to live there and utilize the other amenities being provided to them under different Government Resolutions. As such, the members of the petitioner association who are not actually residing at Sipu Dam site and are residing in Dantiwada colony are entitled to the project allowance as well as other amenities as per Govt. Resolution dated 27-12-1988.

8. In the facts and circumstances of the case, the members of the petitioner association are entitled to get project allowance as well as other amenities as per GR dated 27-12-1988. Hence, the respondents are not entitled to to recover any amount of project allowance which already been paid to the members of the petitioner association.

9. In view of the above discussion, this petition is allowed and it is held that in case the Sipu Project is in existence or the Sipu Project remains in existence and members of petitioner association work in the project and live in the colony of Dantiwada, in that case only, the petitioners are entitled to get the benefits as per the Government Resolution dated 27-12-1988 and the respondents are directed to pay the arrears of project allowance as per the terms and conditions of GR dated 27-12-1988 with effect from 1-5-1988 after adjusting the amount of project allowance that has already been paid to the members of the petitioner association. The respondents are further directed to continue to implement the GR dated 27-12-1988 till Sipu Project remains in existence. Rule is made absolute to the aforesaid extent, with no order as to costs.

(Kundan Singh, J.)

/JVSatwara/